No. 16393

United States Court of Appeals

for the Ninth Circuit

DAVID NAUMU,

Appellant.

vs.

TERRITORY OF HAWAII,

Appellee.

Transcript of Record

Appeal from the Supreme Court for the Territory of Hawaii

Phillips & Van Orden Co., 4th & Berry, San Francisco, Calif.—4-17-59

No. 16393

United States
Court of Appeals
for the Ninth Circuit

DAVID NAUMU,

Appellant.

vs.

TERRITORY OF HAWAII,

Appellee.

Transcript of Record

Appeal from the Supreme Court for the Territory of Hawaii

Phillips & Van Orden Co., 4th & Berry, San Francisco, Calif.—4-17-59

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

ATTORNEYS OF RECORD

HYMAN M. GREENSTEIN, ESQ.,
400 S. Beretania St.,
Honolulu, Hawaii,

For the Appellant.

JOHN H. PETERS, ESQ.,
Public Prosecutor;

FREDERICK T. J. TITCOMB,
Asst. Public Prosecutor,
City Hall,
Honolulu, Hawaii,

For the Appellee.

In the District Court of Honolulu, City and County of, Territory of Hawaii

TERRITORY OF HAWAII,

vs.

DAVID NAUMU,

Defendant.

January 9, 1958

Hon. E. Ing: Presiding.
L. Ishida: Prosecuting.
D. Look: Clerk-Reporter.

Violation of Section 11343 Revised Laws of Hawaii, 1945. (Gambling)

CHARGE

(Defendant charged with one other)

Walter Y. Miyashiro and David Naumu you and each of you are hereby charged in Honolulu, City & County of Honolulu, Territory of Hawaii, in that on or about the 5th day of February, 1957, you did conduct a gambling game in which machines were used or in which something of value was won or lost to wit: free games on the pinball machines, contrary to Section 11343/45.

In the District Court of Honolulu, City and County of Honolulu, Territory of Hawaii

TERRITORY OF HAWAII,

vs.

DAVID NAUMU,

Defendant.

TERRITORY OF HAWAII,

vs.

HOWARD WONG,

Defendant.

TERRITORY OF HAWAII,

vs.

KENICHI KANESHIRO,

Defendant.

TERRITORY OF HAWAII,

vs.

WALTER Y. MIYASHIRO,

Defendant.

DEMURRER
(Gambling)

Come now defendants above named, by Hyman M. Greenstein and Robert A. Franklin, their attorneys, and hereby demur to the charge or complaint filed against them, and move to quash the same upon the following grounds:

I.

That said complaint or charge fails to state facts sufficient to constitute a violation of Section 11343, Revised Laws of Hawaii, 1945, in that defendants are charged with having carried on and conducted a gambling game known as "pin ball" wherein things of value, to wit, free games, were either won or lost; and that the giving of a free game or games does not constitute the giving of anything of value within the meaning and prohibition of said gambling statute.

II.

That Section 11343, Revised Laws of Hawaii, 1945, upon which said complaint or charge is based, is invalid, defective, null and void in violation of defendants' rights under the Fifth and Fourteenth Amendments to the Constitution of the United States in that said statute is vague, indefinite and uncertain.

III.

That said Section 11343, Revised Laws of Hawaii, 1945, a statute prohibiting gambling, is invalid, defective, null and void, in violation of defendants' property rights under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied herein, to the operation by defendants of a pin ball machine game wherein free games or free re-plays may be awarded to a successful player.

Dated: Honolulu, Hawaii, this 10th day of January, 1958.

DAVID NAUMU, KENICHI KANESHIRO, HOWARD WONG, and WALTER Y. MIYASHIRO,

Defendants;

By HYMAN M. GREENSTEIN and ROBERT A. FRANKLIN,
Their Attorneys;

By /s/ HYMAN M. GREENSTEIN.

[Endorsed]: Filed January 13, 1958.

In the District Court of Honolulu, City and County of Honolulu, Territory of Hawaii

TERRITORY OF HAWAII,

vs.

DAVID NAUMU,

Defendant.

(Gambling)

MAGISTRATE'S CERTIFICATE OF APPEAL

I hereby certify that on the 24th day of January, 1958, defendant was found guilty of a violation of Section 11343, Revised Laws of Hawaii, 1945, and sentenced to pay a fine of $25.00, suspended.

He was charged orally that on February 5, 1957, in Honolulu, he carried on and conducted a gambling game known as "pin ball" wherein things of value, to wit, free games were won or lost, in violation of Section 11343, R.L.H. 1945.

A demurrer was filed on behalf of said defendant challenging the applicability of the facts alleged to the offense charged, and challenging the constitutionality of the statute as enacted and applied.

This demurrer was overruled.

The case was then submitted on an agreed statement of facts which consisted of the following:

1. Defendant admitted that at the time and place alleged in the charge, he did operate and maintain a pin ball machine game wherein free games were won or lost.

2. That at the time of the arrest of the defendant the machine in question was seized and confiscated by the police.

The case being submitted on said agreed statement of facts, a finding of guilty was entered against the defendant as aforesaid.

I further certify that the points of law involved herein are as set forth in said demurrer.

Defendant contends in said demurrer.

"

I.

That said complaint or charge fails to state facts sufficient to constitute a violation of Section 11343,

Revised Laws of Hawaii, 1945, in that defendant is charged with having carried on and conducted a gambling game known as "pin ball" wherein things of value, to wit, free games, were either won or lost; and that the giving of a free game or games does not constitute the giving of anything of value within the meaning and prohibition of said gambling statute.

II.

That Section 11343, Revised Laws of Hawaii, 1945, upon which said complaint or charge is based, is invalid, defective, null and void in violation of defendant's rights under the Fifth and Fourteenth Amendments to the Constitution of the United States in that said statute is vague, indefinite and uncertain.

III.

That said Section 11343, Revised Laws of Hawaii, 1945, a statute prohibiting gambling, is invalid, defective, null and void, in violation of defendant's property rights under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied herein, to the operation by defendant of a pin ball machine game wherein free games or free re-plays may be awarded to a successful player."

That I ruled against the defendant on all said points of law, in overruling said demurrer.

An appeal from said judgment has been duly noted by the defendant to the Supreme Court of the

Territory of Hawaii on points of law, and said appeal has been duly perfected.

A full and correct copy of my record in this case is hereto attached.

Given under my hand this 21st day of February, 1958.

/s/ HARRY STEINER,
District Magistrate, District Court of Honolulu, City and County of Honolulu, Territory of Hawaii.

Approved as to form:

/s/ FREDERICK J. TITCOMB,
Assistant Public Prosecutor.

[Endorsed]: Filed February 18, 1958.

[Title of District Court and Cause.]

NOTICE AND CERTIFICATE OF APPEAL TO THE SUPREME COURT OF THE TERRITORY OF HAWAII ON POINTS OF LAW

I Hereby Certify that on the 24th day of January, 1958, in the above-entitled cause, I found the above-named defendant guilty of the violation, to wit:

Walter Y. Miyashiro and David Naumu you and each of you are hereby charged in Honolulu, City and County of Honolulu, Territory of Hawaii, in

that on or about the 5th day of February, 1957, you did conduct a gambling game in which machines were used or in which something of value was won or lost to wit: free games on the pinball machines, contrary to Section 11343, Revised Laws of Hawaii, 1495;

and sentenced him to pay a fine of $25.00; however, execution of the fine suspended for 13 months.

That an appeal from said judgment was duly noted by the defendant above named to the Supreme Court of the Territory of Hawaii, on Points of Law and that said appeal has since been duly perfected.

A full and correct copy of my record in said case is hereto attached.

Given Under My Hand this 18th day of February, A.D. 1958.

/s/ HARRY STEINER,

1st District Magistrate of Honolulu, City and County of Honolulu, Territory of Hawaii.

D.C. Complaint No. 1957-484

Note—Magistrates will do well, at the time of rendering judgment, cause the annexed notice to be signed by the losing party, whether the appeal will be perfected or not. If the appeal is not perfected the certificate will not be signed or used. See Chapter 96, Revised Laws of Hawaii 1935.

District Court of Honolulu, City and
County of Honolulu, Territory of Hawaii

TERRITORY OF HAWAII,

vs.

DAVID NAUMU,

Defendant.

The defendant in this case appeals from the judgment herein to the Supreme Court of the Territory of Hawaii, on Points of Law.

Dated, Honolulu, T. H., January 31, 1958.

/s/ DAVID NAUMU,

By /s/ H. M. GREENSTEIN,
His Atty.

Appeal filed Jan. 31, 1958, at 1:25 P.M.

Appeal bond filed No. .....$.....19.., at..P.M.

/s/ M. E. THEVENIN,
Clerk, District Court of
Honolulu.

Appeal perfected Feb. 18, 1958, at 3:00 P.M.

Appeal costs paid $50.00, Feb. .., 1958, 3:00 P.M.

Appeal bond filed No. .....$.....19.., at..P.M.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, Pearl E. Souza, Clerk of the District Court of Honolulu, do hereby certify that the foregoing papers are the originals in the above-entitled cause.

The documents are specifically designated and enumerated as follows:

1. Charge (defendant charged with one other).
2. Demurrer.
3. Magistrate's certificate of appeal.
4. Notice and certificate of appeal.
5. This praecipe.
6. Clerk's certificate.
7. Itemized statement of costs.

Dated at Honolulu, City and County of Honolulu, Territory of Hawaii, this 21st day of March, 1958.

/s/ PEARL E. SOUZA,
Clerk, District Court of
Honolulu.

In the Supreme Court of the
Territory of Hawaii

October Term, 1958

No. 4067

TERRITORY OF HAWAII,

vs.

DAVID NAUMU.

Points of Law to District Court of Honolulu,
Hon. Harry Steiner, Magistrate.

OPINION

Submitted November 3, 1958

Decided December 15, 1958.

Rice, C. J., Stainback and Marumoto, J.

Constitutional Law—statute—vagueness.

Vagueness in a statute may violate the due process clause of the Fifth and Fourteenth Amendments to the Constitution of the United States.

Same—same—same.

A statute which gives adequate warning of what falls under its ban and provides a sufficient standard for its objective and impartial application meets the requirements of due process.

Same—same—same.

A statute which prohibits any game in which money or "anything of value" is lost or won is not so vague as to violate the due process clause.

Same—same—discriminatory application.

Denial of equal justice by the application of a statute fair on its face in a discriminatory manner is within the prohibition of the Constitution.

Same—same—same.

Application of R. L. H. 1955, § 288-4, to pinball machine games in which free plays are awarded does not constitute discriminatory application of the statute.

Opinion of the Court by Marumoto, J.

Appellant, David Naumu, was charged in the district court of Honolulu with conducting "a gambling game in which machines were used or in which something of value was won or lost, to wit: free games on the pinball machines contrary to Section 11343 RLH/45." He interposed a demurrer challenging the applicability of the facts alleged to the offense charged and the constitutionality of the statute as enacted and applied. The district magistrate overruled the demurrer. Thereupon, the parties submitted the case on an agreed statement of facts in which appellant admitted that at the time and place alleged in the charge he operated a pinball machine game in which free games were won or lost. The

magistrate found appellant guilty and sentenced him to pay a fine of $25, suspended.

The case is before us on appeal from such judgment on points of law.

Appellant alleges that the magistrate erred in ruling:

(1) that the charge stated facts sufficient to constitute a violation of R.L.H. 1945, § 11343, now R.L.H. 1955, § 288-4;

(2) that R.L.H. 1955, § 288-4, is not invalid, defective, null and void, in violation of appellant's rights under the Fifth and Fourteenth Amendments to the Constitution of the United States in that the statute is vague, indefinite and uncertain; and

(3) that R.L.H. 1955, § 288-4, is not invalid, defective, null and void, in violation of appellant's property rights under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied in the case, to the operation of a pinball machine game wherein free plays or free replays may be awarded to a successful player.

The statute in question provides for the punishment of every person found guilty of conducting any game in which money or "anything of value" is lost or won. In Territory vs. Uyehara, 42 Haw. 184, we held that free games won on a pinball machine came within the meaning of "anything of value" as used in the statute.

We see no merit in the first error alleged by appellant. The question raised therein is identical with

the question considered and decided in the Uyehara case.

With reference to the second alleged error, appellant's contention is that the phrase "anything of value" in R.L.H. 1955, § 288-4, is too vague, indefinite and uncertain to withstand the strict construction due a penal statute.

A statute may be so vague as to violate the due process clause of the Fifth and Fourteenth Amendments. In Connally vs. General Construction Co., 269 U. S. 385, the Supreme Court of the United States affirmed an interlocutory decree of the district court enjoining the enforcement of a statute containing the phrase "current rate of per diem wages in the locality where the work is performed." In doing so, the court made the oft-quoted statement that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

However, actually the court has required less definiteness than is indicated in the foregoing statement in the Connally case. This fact is recognized in the following further statement in that very case:

"The question whether given legislative enactments have been thus wanting in certainty has frequently been before this court. In some of the cases the statutes involved were upheld; in others, declared invalid. The precise point of differentiation in some instances is not easy of statement. But it

will be enough for present purposes to say generally that the decisions of the court upholding statutes as sufficiently certain, rested upon the conclusion that they employed words or phrases having a technical or other special meaning, well enough known to enable those within their reach to correctly apply them, Hygrade Provision Co. vs. Sherman, 266 U. S. 497, 502; Omaechevarria vs. Idaho, 246 U. S. 343, 348, or a well-settled common law meaning, notwithstanding an element of degree in the definition as to which estimates might differ, Nash vs. United States, 229 U. S. 373, 376; International Harvester Co. vs. Kentucky, [234 U. S. 216, 223], or, as broadly stated by Mr. Chief Justice White in United States vs. Cohen Grocery Co., 255 U.S. 81, 92, 'that, for reasons found to result either from the text of the statutes involved or the subject with which they dealt, a standard of some sort was afforded.' "

In United States vs. Petrillo, 332 U. S. 1, the court upheld the validity of a section of the Communications Act of 1934, 48 Stat. 1064, 1102, as amended, which provided for the punishment of any person attempting to coerce a licensee to employ "any person or persons in excess of the number of employees needed by such licensee to perform actual services." The court stated:

"* * * We think that the language Congress used provides an adequate warning as to what conduct falls under its ban, and marks boundaries sufficiently distinct for judges and juries fairly to administer the law in accordance with the will of Congress. That there may be marginal cases in which it is

difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense. Robinson vs. United States, 324 U. S. 282, 285-286. It would strain the requirement for certainty in criminal law standards too near the breaking point to say that it was impossible judicially to determine whether a person knew when he was wilfully attempting to compel another to hire unneeded employees. See Screws vs. United States, 325 U. S. 91; United States vs. Ragen, 314 U. S. 513, 522, 524, 525. The Constitution has erected procedural safeguards to protect against conviction for crime except for violation of laws which have clearly defined conduct thereafter to be punished; but the Constitution does not require impossible standards. The language here challenged conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. The Constitution requires no more."

The language that was attacked in the Connally case presented, in the opinion of the court, a double uncertainty fatal in a criminal statute. The words "current rate of per diem wages" did not denote a specific sum, but minimum, maximum and intermediate amounts, indeterminately, varying from time to time and dependent upon such considerations as kinds of work done and efficiency of workmen; and the word "locality" was an elastic term which might be equally satisfied by areas measured by rods or by miles, depending upon circumstances. The vice in the language was that it made the application of

the law depend "not upon a word of fixed meaning in itself, or one made definite by statutory or judicial definition, or by the context or other legitimate aid to its construction," but upon the personal equation of those who applied the law. In other words, the language did not provide a rule of sufficient objectivity to guard against an arbitrary result.

In our opinion, the phrase "anything of value," as used in R.L.H. 1955, § 288-4, is not subject to such vice and does not render the statute constitutionally vulnerable for uncertainty. It can hardly be said that the phrase does not give adequate warning as to what falls under its ban or that it does not provide a sufficient standard for the objective and impartial application of the law.

Such phrase is commonly found in state statutes designed to curb the evils of gambling. In a gambling statute, the use of such all-embracing and catchall phrase is necessary to meet the ingenuity of those who are intent upon circumventing the law. A new method of circumvention necessarily raises a question as to the applicability of the law to the invention. The fact that such question is raised does not make the law uncertain in a constitutional sense. Those who devise means of circumvention take the risk of treading on the brink of the law. As stated by Mr. Justice Holmes in United States vs. Wurzbach, 280 U. S. 396, 399: "The precise course of the line may be uncertain, but no one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk."

The third error alleged by appellant hardly requires our consideration, for the appellant himself has not given any serious consideration to it. His brief on this point covers less than one page. He has not cited any authority, although apparently he relies on the principle first set forth in Yick Wo vs. Hopkins, 118 U. S. 356, 373, as follows: "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution." We do not see any such discriminatory application of the law in this case.

Affirmed.

/s/ PHILIP L. RICE,

HYMAN M. GREENSTEIN,
For Defendant-Appellant.

/s/ INGRAM M. STAINBACH;

FREDERICK J. TITCOMB,
Assistant Public Prosecutor,
City and County of Honolulu,
For Plaintiff-Appellee.

/s/ MASAJI MARUMOTO.

[Endorsed]: Filed December 15, 1958.

United States Court of Appeals
for the Ninth Circuit

No. 16393

DAVID NAUMU,

Appellant,

vs.

TERRITORY OF HAWAII,

Appellee.

COST BOND

Know All Men by These Presents:

That David Naumu, as Principal, and Continental Casualty Company, as surety, are held and firmly bound unto the Territory of Hawaii in the full sum of Two Hundred Fifty Dollars ($250.00) for the payment of which well and truly to be made we do bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Whereas, lately, on to wit, the 15th day of December, 1958, the Supreme Court of the Territory of Hawaii, affirmed a judgment of conviction against the Principal above named; and

Whereas, notice of appeal has been given of appeal to the United States Court of Appeals for the Ninth Circuit, to secure a reversal of said judgment;

Now, Therefore, the condition of the above obligation is such that if the said David Naumu shall

prosecute his appeal with effect, and shall answer all costs if he fails to make good his appeal, then this obligation shall be void; otherwise to remain in full force, effect and virtue.

In Witness Whereof, the above-bounden Principal and surety have affixed their signatures this 15th day of January, 1959.

DAVID NAUMU,

By /s/ HYMAN M. GREENSTEIN,
Principal.

CONTINENTAL CASUALTY COMPANY,

By /s/ MORITO TSUGAWA,
Its Attorney-in-Fact.

[Seal] By /s/ KENNETH I. SETO,
Its Attorney-in-Fact.

Surety.

City and County of Honolulu,
Territory of Hawaii—ss.

On this 15th day of January, 1959, before me appeared Morito Tsugawa and Kenneth I. Seto, to me personally known, who, being by me duly sworn, did say that they are the Attorneys-in-Fact of the Continental Casualty Company, a corporation of the State of Illinois, duly appointed under Power of

Attorney dated the September 26, 1956, which Power of Attorney is now in full force and effect; that the said Continental Casualty Company is and was on April 15, 1958, duly authorized by the Insurance Commissioner of the Territory of Hawaii to guarantee the fidelity of persons holding offices of public or private trust and the performance of contracts other than of insurance and to execute and guarantee bonds and undertakings required or permitted in actions or proceedings or by law allowed; and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation, under the authority of its Board of Directors, and said Morito Tsugawa and Kenneth I. Seto acknowledged said instrument to be the free act and deed of said corporation.

[Seal] /s/ JAMES SLEIPA CHINA,
Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires: October 10, 1959.

[Endorsed]: Filed January 15, 1959.

In the Supreme Court of the Territory of Hawaii, October Term 1958

No. 4067

TERRITORY OF HAWAII,

Plaintiff-Appellee,

vs.

DAVID NAUMU,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF HONOLULU ON POINTS OF LAW

JUDGMENT ON WRIT OF ERROR

Pursuant to the opinion of the supreme court of the Territory of Hawaii, rendered and filed on December 15, 1958, the judgment of the lower court is affirmed.

Dated: Honolulu, Hawaii, February 2, 1959.

By the Court:

[Seal] /s/ LEOTI V. KRONE,
Clerk.

Approved:

/s/ MASAJI MARUMOTO,
Associate Justice.

[Endorsed]: Filed February 2, 1959.

[Title of Supreme Court and Cause.]

AMENDED NOTICE OF APPEAL

Name and Address of Appellant—David Naumu, 558 K Road, Honolulu, Hawaii.

Name and Address of Appellant's Attorney: Hyman M. Greenstein, 400 South Beretania Street, P. O. Box 661, Honolulu, Hawaii.

Offense: Operating a game known as "pin ball" wherein things of value, to wit, free games were won or lost, in violation of Section 11343, Revised Laws of Hawaii, 1945 (gambling statute).

Judgment: Appellant was found guilty in the District Court of Honolulu on January 24, 1958, and sentenced to pay a fine of $25.00, suspended.

Judgment Affirmed: By the Supreme Court of the Territory of Hawaii, February 2, 1959.

Appellant above named hereby appeals to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated at Honolulu, Hawaii, this 7th day of February, 1959.

/s/ HYMAN M. GREENSTEIN,
Attorney for Appellant.

[Endorsed]: Filed February 9, 1959.

In the United States Court of Appeals
for the Ninth Circuit

No. 16393

(Supreme Court No. 4067)

DAVID NAUMU,

Appellant,

vs.

TERRITORY OF HAWAII,

Appellee.

Appeal from Supreme Court of Hawaii to 9 CCA

Hon. Philip L. Rice, C. J.
Hon. Ingram M. Stainback, J.
Hon. Masaji Marumoto, J.

SUPREME COURT CLERK'S CERTIFICATE

I, Leoti V. Krone, clerk of the Supreme Court, Territory of Hawaii, do certify that the documents listed in the index to the certified record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled court and cause, and in accordance with the amended designation of contents of record on appeal filed February 9, 1959, are full, true and correct copies and certified copies of the originals filed in said court and cause, except such documents listed in said index as originals, and that such documents so listed are the originals filed in said court and cause.

I further certify that all of the above listed items are attached hereto.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the above court this 23rd day of February, 1959.

[Seal] /s/ LEOTI V. KRONE,
Clerk.

[Endorsed]: No. 16393. United States Court of Appeals for the Ninth Circuit. David Naumu, Appellant, vs. Territory of Hawaii, Appellee. Transcript of Record. Appeal from the Supreme Court for the Territory of Hawaii.

Filed February 28, 1959.

Docketed: March 7, 1959.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

Appellant intends to rely upon the following points on appeal:

1. The Court below erred in ruling that the charge stated facts sufficient to constitute a violation of Section 11343, Revised Laws of Hawaii, 1945, now Section 288-4, Revised Laws of Hawaii, 1955.

2. The Court below erred in ruling that said statute is not violative of appellant's constitutional rights in that said statute is vague, indefinite and uncertain.

3. The Court below erred in ruling that said statute as applied to the operation of a pinball machine game wherein free games or free re-plays may be awarded to a successful player is not violative of appellant's constitutional rights.

Dated at Honolulu, Hawaii, this 15th day of January, 1959.

/s/ HYMAN M. GREENSTEIN,
Attorney for Appellant.

HYMAN M. GREENSTEIN and
ROBERT A. FRANKLIN,
Of Counsel.

Receipt of copy acknowledged.

[Endorsed]: Filed March 9, 1959.